UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

WELCH ALLYN, INC.,

Plaintiff,

v.

OBP CORPORATION and OBP MEDICAL, INC.,

Defendants.

5:14-cv-1122 (TJM/DEP)
LEAD CASE

WELCH ALLYN, INC.,

Plaintiff,

v.

OBP CORPORATION and OBP MEDICAL, INC.,

Defendants.

5:16-cv-538 (TJM/DEP)
MEMBER CASE

Thomas J. McAvoy, D.J.

DECISION and ORDER

The Court referred these patent infringement actions to the Hon. David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Rule 72.3(d) of the Local Rules of the Northern District of New York. Presently at issue is claim construction. See Plaintiff's Opening Claim Construction Brief, dkt. # 119; Defendants' Opening Claim Construction Brief, dkt. # 120.

The Report-Recommendation, dated June 23, 2017, recommended construction language for the claim terms at dispute in the matter.

Defendants filed objections to the Report and Recommendation. When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff's objections, this Court has determined to accept and adopt the recommendations of Magistrate Judge Peebles for the reasons stated in the Report-Recommendation.

Accordingly:

Defendants' objections to the Report-Recommendation, dkt. # 131, are hereby **OVERRULED**, and the Report-Recommendation, dkt. # 126, is hereby **ADOPTED**. The following constructions of the claim terms at issue are hereby adopted:

Term	**Construction**
illumination assembly	a self-contained illumination assembly that can be easily moved from place-to-place
mechanism for energizing/mechanism for selectively energizing	a slider switch with a conductive strip; a rotary switch with a conductive strip; an optical switch; a magnetic/reed switch; an ON/OFF throw switch that can be enabled with the speculum when engaged therewith to automatically or manually energize and de-energize the LED; and equivalents of the foregoing switches

the housing extends along the inner surface of the curved portion of the lower blade	the housing extends along, but can extend beyond, the inner surface of the lower blade that is curved
the proximal end of the housing is disposed along the inner surface of the curved portion of the lower blade/a proximal end of the housing is disposed along the inner	the proximal end of the housing is positioned along the lower portion of the inner surface of the lower blade that is the curved portion of the lower blade
the housing of the portable illumination assembly being attached to the inner surface of the curved portion of the lower blade and shaped in accordance with the curved portion/the housing of the portable illumination assembly is attached to the inner surface of the curved portion of the lower blade and shaped in accordance therewith/defined by a shape that conforms with the curved portion	the housing of the portable illumination assembly is attached to the inner surface of the curved portion of the lower blade and is shaped in accordance with the curved portion of the lower blade, but need not be attached to that curved portion at all points
retained	held in place
a switch disposed on the exterior of the housing	at least a portion of the switch is placed in contact with the exterior of the housing
at least one of the speculum and the illumination assembly is configured for at least one of single use or single patient use	the speculum, the illumination assembly, or both, are designed to be discarded after a single use or a single patient use
circuitry	two or more components through which an electric current can flow

IT IS SO ORDERED.

Dated:September 27, 2017

Thomas J. McAvoy
Senior, U.S. District Judge